

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLARD OWENS, JEREMY ELLISON,	:
THOMAS LIVINGSTON, JAMES ROUSSEVE,	:
Individually and on Behalf of All Other Persons	:
Similarly Situated,	:
	:
Plaintiffs,	:
	:
	: 14 Civ. 1909 (VEC) (GWG)
- against -	:
FRESH DIRECT LLC, JASON	:
ACKERMAN, and DAVID MCINERNEY,	: DECLARATION OF
Jointly and Severally,	: ADRIAN WILLIAMS
	:
Defendants.	:
----- X:	:
	:

I, ADRIAN WILLIAMS, hereby declare under the penalty of perjury as follows:

1. I am over eighteen years of age and am competent to testify regarding the matters stated in this declaration.
2. The following is based upon my knowledge, information, and belief as the Chief Operation Officer of FreshDirect. I have been employed in this position since September 2013.
3. I am the Chief Operating Officer of FreshDirect, a position I have held since September 2013. Prior to this position, I was SVP Transportation at FreshDirect, beginning on September 2004.
4. In my capacity as Chief Operating Officer and SVP Transportation, I was personally involved in the collective bargaining negotiations between UTF Trucking Inc. and United Food & Commercial Workers Union Local 348-S, the union that represents the Plaintiffs in this case (the "Union").

5. In or around July 2007, UTF Trucking Inc. and the Union executed a CBA effective June 1, 2007 to May 31, 2010. Attached hereto as Exhibit 1 is a true and correct copy of the 2007 CBA.

6. In negotiations for the 2007 CBA, Plaintiffs' Union, United Food & Commercial Workers Union Local 348-S, proposed that the Company be required to state on its website and in its policy manual that tips were not part of the delivery charge, and that customers wishing to tip delivery personal were free to do so in their sole discretion. A true and correct copy of this proposal is attached hereto as Exhibit 2.

7. In 2010, UTF Trucking Inc. and the Union executed a CBA effective September 1, 2010 to August 31, 2014. Attached hereto as Exhibit 3 is a true and correct copy of the 2010 CBA.

8. In the negotiations leading to the 2010 CBA, the parties again bargained over tipping and agreed to add the Tips Provision.

9. During most recent round of collective bargaining, concluded in August 2014, the Union proposed deleting the tip-related language.

10. The Union's proposal to delete the tip-related language triggered an exchange of proposals regarding the role of the Delivery Fee in the delivery personnel's compensation structure. A true and correct copy of these proposals is attached hereto as Exhibit 4.

11. During the August, 2014 negotiations, the Union also inquired as to whether tipping could be facilitated by adding the ability for customers to tip electronically when ordering.

12. In response to the Union's proposal and the Union's questions, the Company's bargaining team distributed copies of the webpage used by its customers that sets forth the Company's tipping policy. A true and correct copy of FreshDirect's webpage distributed during negotiations is attached hereto as Exhibit 5.

13. The Company's bargaining team further explained to bargaining unit members that the Delivery Fee is intended to cover delivery expenses such as fuel, labor, and truck maintenance, and that the cost of a Manhattan delivery (\$13.00) is actually over twice as much as the Delivery Fee (\$5.99), with the Company absorbing the difference.

14. The Company and the Union openly and repeatedly discussed the meaning of the word "tips," debating whether FreshDirect's customers believe the Delivery Fee to be a tip.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Long Island City, New York
September 11, 2014



Adrian Williams